

2022 Regular Session

SENATE BILL NO. 64

BY SENATOR CONNICK

CRIME/PUNISHMENT. Provides relative to crimes of violence and sex offenses. (8/1/22)

1 AN ACT

2 To amend and reenact R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1)

3 and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of

4 93.5(A) and (B), Code of Criminal Procedure Art. 814(A)(12), and Code of

5 Evidence. Art. 412.1, and to enact R.S. 14:41(D), and 42(A)(7) and Code of Criminal

6 Procedure Art. 814(A)(69) and (70), relative to sex offenses; to provide relative to

7 crimes of violence; to provide relative to the elements of certain sex offenses; to

8 provide relative to certain evidence in sexual assault cases; to provide relative to

9 responsive verdicts for certain sex offenses; to provide definitions; and to provide

10 for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 14:2(B)(8), (29) and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and

13 (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), and the introductory paragraph of 93.5(A) and (B)

14 are hereby amended and reenacted and R.S. 14:41(D) and 42(A)(7) are hereby enacted to

15 read as follows:

16 §2. Definitions

17 \* \* \*

1           B. In this Code, "crime of violence" means an offense that has, as an element,  
 2           the use, attempted use, or threatened use of physical force against the person or  
 3           property of another, and that, by its very nature, involves a substantial risk that  
 4           physical force against the person or property of another may be used in the course  
 5           of committing the offense or an offense that involves the possession or use of a  
 6           dangerous weapon. The following enumerated offenses and attempts to commit any  
 7           of them are included as "crimes of violence":

8   \*       \*       \*

9           (8) ~~Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017~~ **Aggravated**  
 10          **kidnapping of a child.**

11   \*       \*       \*

12          (29) ~~Repealed by Acts 2017, No. 281, §3, eff. August 1, 2017~~ **Molestation**  
 13          **of a juvenile or a person with a physical or mental disability.**

14   \*       \*       \*

15          (40) ~~Repealed by Acts 2014, No. 602, §7, eff. June 12, 2014~~ **Sexual battery**  
 16          **of persons with infirmities.**

17   \*       \*       \*

18          §41. Rape; defined

19   \*       \*       \*

20          B. Emission is not necessary, and any sexual penetration, when the rape  
 21          involves vaginal or anal intercourse, **whether the penetration is accomplished**  
 22          **using the genitals of the offender or using any instrumentality and** however  
 23          slight, is sufficient to complete the crime.

24   \*       \*       \*

25          **D. For purposes of this Subpart, "anal sexual intercourse" and "vaginal**  
 26          **sexual intercourse" mean the intentional engaging in any of the following acts**  
 27          **with another person:**

28          **(1) The penetration of the victim's anus or vagina by the offender using**  
 29          **the genitals of the offender.**

1                   **(2) The penetration of the victim's anus or vagina by the offender using**  
2                   **any instrumentality, except that normal medical treatment or normal sanitary**  
3                   **care shall not be construed as sexual intercourse under the provisions of this**  
4                   **Section.**

5   \*           \*           \*

6                   §42. First degree rape

7                   A. First degree rape is a rape committed upon a person sixty-five years of age  
8                   or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without  
9                   lawful consent of the victim because it is committed under any one or more of the  
10                   following circumstances:

11   \*           \*           \*

12                   (6) When the victim is prevented from resisting the act because the victim  
13                   ~~suffers from a physical or mental infirmity preventing such resistance~~ **is a person**  
14                   **with a disability.**

15                   **(7) When the offender commits the act when engaged in the perpetration**  
16                   **or attempted perpetration of any violation of Subsubpart 3 of Subpart A of Part**  
17                   **III of Chapter 1 of this Title, relative to burglary offenses.**

18   \*           \*           \*

19                   C. For purposes of this Section, **"person with a disability" means a person**  
20                   **with a mental, physical, or developmental disability that substantially impairs**  
21                   **the person's ability to provide adequately for his or her own care or protection.**

22                   the following words have the following meanings:

23                   (1) ~~"Physical infirmity" means a person who is a quadriplegic or paraplegic.~~

24                   (2) ~~"Mental infirmity" means a person with an intelligence quotient of~~  
25                   ~~seventy or lower.~~

26   \*           \*           \*

27                   §43.2. Second degree sexual battery

28                   A. Second degree sexual battery is the intentional engaging in any of the  
29                   following acts with another person when the offender intentionally inflicts serious

1           bodily injury on the victim:

2                   (1) The touching of the anus or genitals of the victim by the offender using  
3 any instrumentality or any part of the body of the offender, **directly or through**  
4 **clothing**; or

5                   (2) The touching of the anus or genitals of the offender by the victim using  
6 any instrumentality or any part of the body of the victim, **directly or through**  
7 **clothing**.

8   \*       \*       \*

9                   §43.3. Oral sexual battery

10                  A. Oral sexual battery is the intentional touching of the anus or genitals of the  
11 victim by the offender using the mouth or tongue of the offender, or the touching of  
12 the anus or genitals of the offender by the victim using the mouth or tongue of the  
13 victim, when any of the following occur:

14                   (1) The victim, ~~who is not the spouse of the offender~~, is under the age of  
15 fifteen years and is at least three years younger than the offender.

16   \*       \*       \*

17                   §44.1. Second degree kidnapping

18                  A. Second degree kidnapping is the doing of any of the acts listed in  
19 Subsection B of this Section wherein the victim is any of the following:

20   \*       \*       \*

21                   (3) Physically injured or sexually abused. **For the purpose of this**  
22 **Paragraph, "sexually abused" means that the victim was subjected to any sex**  
23 **offense as defined in R.S. 15:541.**

24   \*       \*       \*

25                   §44.2. Aggravated kidnapping of a child

26   \*       \*       \*

27                  B.   \*       \*       \*

28                   (2) Notwithstanding the provisions of Paragraph (1) of this Subsection, if the  
29 child is returned not physically injured or sexually abused, then the offender shall be

1 punished in accordance with the provisions of R.S. 14:44.1. For the purposes of this  
2 Paragraph, "sexually abused" means that the child was subjected to any sex  
3 offense as defined in R.S. 15:541.

4 \* \* \*

5 §93.5. Sexual battery of persons with infirmities

6 A. Sexual battery of persons with infirmities is the intentional engaging in  
7 any of the sexual acts listed in Subsection B of this Section with another person, ~~who~~  
8 ~~is not the spouse of the offender~~, when:

9 \* \* \*

10 B. For purposes of this Section, "sexual acts" mean either of the following:

11 (1) The touching of the anus or genitals of the victim by the offender using  
12 any instrumentality or any part of the body of the offender, **directly or through**  
13 **clothing.**

14 (2) The touching of the anus or genitals of the offender by the victim using  
15 any instrumentality or any part of the body of the victim, **directly or through**  
16 **clothing.**

17 \* \* \*

18 Section 2. Code of Criminal Procedure Art. 814(A)(12) is hereby amended and  
19 reenacted and (69) and (70) are hereby enacted to read as follows:

20 Art. 814. Responsive verdicts; in particular

21 A. The only responsive verdicts which may be rendered when the indictment  
22 charges the following offenses are:

23 \* \* \*

24 12. First degree rape (formerly titled aggravated rape) of a child under the age  
25 of thirteen:

26 Guilty.

27 Guilty of attempted first degree rape.

28 Guilty of second degree rape.

29 Guilty of attempted second degree rape.

1 Guilty of third degree rape.

2 Guilty of attempted third degree rape.

3 Guilty of sexual battery of a child under the age of thirteen.

4 Guilty of attempted sexual battery of a child under the age of thirteen.

5 Guilty of sexual battery.

6 Guilty of attempted sexual battery.

7 Guilty of molestation of a juvenile or a person with a physical or mental  
8 disability with a victim under the age of thirteen.

9 Guilty of attempted molestation of a juvenile or a person with a physical  
10 or mental disability with a victim under the age of thirteen.

11 Guilty of molestation of a juvenile or a person with a physical or mental  
12 disability.

13 Guilty of attempted molestation of a juvenile or a person with a physical or  
14 mental disability.

15 Guilty of indecent behavior with a juvenile with a victim under the age  
16 of thirteen.

17 Guilty of attempted indecent behavior with a juvenile with a victim  
18 under the age of thirteen.

19 Guilty of indecent behavior with a juvenile.

20 Guilty of attempted indecent behavior with a juvenile.

21 Not guilty.

22 \* \* \*

23 69. Second Degree Kidnapping When Victim is Sexually Abused:

24 Guilty.

25 Guilty of attempted second degree kidnapping.

26 Guilty of any predicate sex offense or offenses alleged in the indictment  
27 or bill of information.

28 Not guilty.

29 70. Aggravated Kidnapping of a Child When Victim is Sexually Abused:

1                    Guilty.  
 2                    Guilty of attempted aggravated kidnapping of a child.  
 3                    Guilty of any predicate sex offense or offenses alleged in the indictment.  
 4                    Not guilty.

\* \* \*

6                    Section 3. Code of Evidence Art. 412.1 is hereby amended and reenacted to read as  
7 follows:

8                    Art. 412.1. Victim's attire in sexual assault cases

9                    A. When an accused is charged with **a crime involving sexually assaultive**  
 10                   **behavior or with acts that constitute a sex offense involving a victim who was**  
 11                   **under the age of seventeen at the time of the offense,** ~~the crime of aggravated or~~  
 12                   ~~first degree rape, forcible or second degree rape, simple or third degree rape, sexual~~  
 13                   ~~battery, or second degree sexual battery,~~ the manner and style of the victim's attire  
 14                   shall not be admissible as evidence that the victim encouraged or consented to the  
 15                   offense; however, items of clothing or parts thereof may be introduced in order to  
 16                   establish the presence or absence of the elements of the offense and the proof of its  
 17                   occurrence.

18                   B. The rules of admissibility of evidence provided by this Article shall also  
 19                   apply to civil actions brought by the victim which are alleged to arise from ~~the~~  
 20                   ~~crimes of aggravated or first degree rape, forcible or second degree rape, simple or~~  
 21                   ~~third degree rape, sexual battery, or second degree sexual battery~~ **any crime**  
 22                   **referenced in Paragraph A of this Article** committed by the defendant, whether  
 23                   or not convicted of such crimes.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Whitney Kauffeld.

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	DIGEST	
SB 64 Original	2022 Regular Session	Connick

Present law provides for a nonexhaustive list of crimes of violence , the definition of rape, and the crimes of first degree/aggravated rape, second degree sexual battery, oral sexual battery, second degree kidnapping, aggravated kidnapping of a child, and sexual battery of persons with infirmities.

Proposed law does the following:

- (1) Adds the present law crimes of aggravated kidnapping of a child, molestation, and sexual battery of persons with infirmities to the list of crimes of violence.
- (2) Defines rape to include foreign object penetration.
- (3) Defines first degree/aggravated rape to include rapes committed during the course of burglary crimes.
- (4) Replaces the definitions of "physical infirmity" and "mental infirmity" relative to first degree/aggravated rape with more inclusive language to better protect victims with disabilities.
- (5) Defines the term "sexually abused" relative to second degree kidnapping and aggravated kidnapping of a child to mean that the victim was subjected to any offense defined as a sex offense by present law.
- (6) Aligns second degree sexual battery, oral sexual battery, and sexual battery of persons with infirmities with other provisions of present law.

Proposed law otherwise retains present law.

Present law provides for responsive verdicts for certain present law sex offenses.

Proposed law retains present law and adds responsive verdicts for aggravated kidnapping of a child when the victim is sexually abused and second degree kidnapping when the victim is sexually abused.

Proposed law makes the "under 13" variants of sexual battery, molestation, and indecent behavior with a juvenile responsive to first degree/aggravated rape of a child under 13.

Present law provides that when an accused is charged with certain sex offenses, the manner and style of the victim's attire is inadmissible to show that the victim encouraged or consented to the offense, but may be introduced to establish the presence or absence of the elements of the offense and the proof of its occurrence. Present law further provides that the present law rules of admissibility also apply to civil actions brought by the victim that are alleged to arise from sex offenses committed by the defendant, whether or not convicted of these crimes.

Proposed law updates the evidentiary rule that a sexual assault victim's attire is generally inadmissible in a proceeding to broadly include all crimes of sexual assault or a crime defined as a sex offense by present law.

Effective on August 1, 2022.

(Amends R.S. 14:2(B)(8), (29), and (40), 41(B), 42(A)(6) and (C), 43.2(A)(1) and (2), 43.3(A)(1), 44.1(A)(3), 44.2(B)(2), the introductory paragraph of 93.5(A) and (B), C.Cr.P. Art. 814(A)(12), and C.E. Art. 412.1; adds R.S. 14:41(D), and 14:42(A)(7) and C.Cr.P. Art. 814(A)(69) and (70))